

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**HOUSE BILL 616**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Raymond M. Ruiz

**AN ACT**

RELATING TO PUBLIC WORKS; INCREASING THE MINIMUM CONTRACT VALUE FOR THE MINIMUM WAGE ON PUBLIC WORKS; GIVING MORE DUTIES AND AUTHORITY TO THE DIRECTOR OF THE LABOR AND INDUSTRIAL DIVISION OF THE LABOR DEPARTMENT; CLARIFYING THE DEFINITION OF WAGES; INCREASING LIABILITY AND REMEDIES FOR VIOLATION OF THE PUBLIC WORKS MINIMUM WAGE ACT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 13-4-11 NMSA 1978 (being Laws 1965, Chapter 35, Section 1, as amended) is amended to read:**

**"13-4-11. MINIMUM WAGES ON PUBLIC WORKS--WEEKLY PAYMENT--  
POSTING WAGE SCALE--WITHHOLDING FUNDS.--**

**A. Every contract or project in excess of [~~twenty thousand dollars (\$20,000) to which~~] one hundred thousand dollars (\$100,000) that the state or any political subdivision thereof is a party for construction, alteration, demolition or**

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 repair or any combination of these, including painting and  
2 decorating, of public buildings, public works or public roads  
3 of the state and ~~which~~ that requires or involves the  
4 employment of mechanics, laborers or both shall contain a  
5 provision stating the minimum wages to be paid to various  
6 classes of laborers and mechanics, which shall be based upon  
7 the wages that will be determined by the director of the labor  
8 and industrial division of the labor department to be  
9 prevailing for the corresponding classes of laborers and  
10 mechanics employed on contract work of a similar nature in the  
11 state or locality, and every contract or project shall contain  
12 a stipulation that the contractor, subcontractor, employer or  
13 ~~any~~ a person acting as a contractor shall pay all mechanics  
14 and laborers employed on the site of the project,  
15 unconditionally and not less often than once a week and without  
16 subsequent unlawful deduction or rebate on any account, the  
17 full amounts accrued at time of payment computed at wage rates  
18 not less than those stated in the minimum wage rates issued for  
19 the project.

20 ~~[A.]~~ B. For the purpose of making wage  
21 determinations, the director of the labor and industrial  
22 division of the labor department shall conduct a continuing  
23 program for the obtaining and compiling of wage-rate  
24 information and shall encourage the voluntary submission of  
25 wage-rate data by contractors, contractors' associations, labor

. 144198. 1

underscored material = new  
[bracketed material] = delete

1 organizations, interested persons and public officers. Before  
2 making a determination of wage rates for any project, [~~he~~] the  
3 director shall give due regard to the information thus  
4 obtained. Whenever the director deems that the data at hand  
5 are insufficient to make a wage determination, he may have a  
6 field survey conducted for the purpose of obtaining sufficient  
7 information upon which to make determination of wage rates.  
8 [~~Any~~] An interested person shall have the right to submit to  
9 the director written data, views and arguments why the wage  
10 determination should be changed.

11 [~~B.-~~] C. The scale of wages to be paid shall be  
12 posted by the contractor or person acting as a contractor in a  
13 prominent and easily accessible place at the site of the work;  
14 and it is further provided that there may be withheld from the  
15 contractor, subcontractor, employer or [~~any~~] a person acting as  
16 a contractor so much of accrued payments as may be considered  
17 necessary by the contracting officer of the state or political  
18 subdivision to pay to laborers and mechanics employed on the  
19 project the difference between the rates of wages required by  
20 the director of the labor and industrial division of the labor  
21 department to be paid to laborers and mechanics on the work and  
22 the rates of wages received by such laborers and mechanics and  
23 not refunded to the contractor, subcontractor, employer or  
24 [~~any~~] a person acting as a contractor or their agents.  
25

underscored material = new  
[bracketed material] = delete

1                   D. Notwithstanding any other provision of law  
2 applicable to public works contracts or agreements, the  
3 director of the labor and industrial division of the labor  
4 department may:

5                   (1) issue investigative or hearing subpoenas  
6 for the production of documents or witnesses, or both; and

7                   (2) attach and prohibit the release of any  
8 assurance of payment required under Section 13-4-18 NMSA 1978  
9 for a reasonable period of time beyond the time limits  
10 specified in that section until the director satisfactorily  
11 resolves any probable cause to believe a violation of the  
12 Public Works Minimum Wage Act or its implementing regulations  
13 has taken place.

14                   [~~E.~~] E. The director of the labor and industrial  
15 division of the labor department [~~shall have authority to~~] may  
16 issue rules [~~and regulations~~] necessary to administer and  
17 accomplish the purposes of the Public Works Minimum Wage Act. "

18                   Section 2. Section 13-4-12 NMSA 1978 (being Laws 1965,  
19 Chapter 35, Section 2, as amended) is amended to read:

20                   "13-4-12. DEFINITION OF THE TERM "WAGES".--

21                   A. As used in Section 13-4-11 NMSA 1978, "wages",  
22 "scale of wages", "wage rates", "minimum wages" and "prevailing  
23 wages" include:

- 24                   (1) the basic hourly rate of pay; and  
25                   (2) the amount of:

underscored material = new  
[bracketed material] = delete

1 (a) the rate of contribution irrevocably  
2 made by a contractor, subcontractor, employer or any person  
3 acting as a contractor to a trustee or a third person pursuant  
4 to a fund, plan or program; and

5 (b) the rate of costs to a contractor,  
6 subcontractor, employer or ~~any~~ a person acting as a  
7 contractor which reasonably may be anticipated in providing  
8 benefits to laborers and mechanics pursuant to an enforceable  
9 commitment to carry out a financially responsible plan or  
10 program which was communicated in writing to the laborers and  
11 mechanics affected for: 1) medical or hospital care; 2)  
12 pensions on retirement or death; 3) compensation for injuries  
13 or illness resulting from occupational activity; or 4)  
14 insurance to provide for any of the foregoing; and for: 5)  
15 unemployment benefits; 6) life insurance; 7) disability and  
16 sickness insurance; 8) accident insurance; 9) vacation and  
17 holiday pay; 10) costs of apprenticeship or other similar  
18 programs; or for 11) other bona fide fringe benefits; but only  
19 where the contractor, subcontractor, employer or ~~any~~ a person  
20 acting as a contractor is not required by other federal, state  
21 or local law to provide any of the foregoing or similar  
22 benefits.

23 B. The obligation of a contractor, subcontractor,  
24 employer or person acting as a contractor to make payment in  
25 accordance with the prevailing wage determinations of the

. 144198. 1

underscored material = new  
[bracketed material] = delete

1 director of the labor and industrial division of the labor  
2 department, insofar as Section 13-4-11 NMSA 1978 or other  
3 sections of legislative acts incorporating Section 13-4-11 NMSA  
4 1978 are concerned, may be discharged by [~~(1) the making of~~  
5 ~~payments in cash;~~] the making of payments consistent with  
6 Subsection B of Section 50-4-2 NMSA 1978, except that the  
7 frequency of payments shall comply with Subsection A of Section  
8 13-4-11 NMSA 1978. The payments shall include:

9 (1) payment of the base wage rate as the  
10 director of the labor and industrial division of the labor  
11 department has determined to be prevailing for the appropriate  
12 class of laborers or mechanics; and

13 (2) the making of contributions of a type  
14 referred to in Subparagraph (a) of Paragraph (2) of Subsection  
15 A of this section; or

16 (3) the assumption of an enforceable  
17 commitment to bear the costs of a plan or program of a type  
18 referred to in Subparagraph (b) of Paragraph (2) of Subsection  
19 A of this section; or

20 (4) any combination [~~thereof~~] of Paragraphs  
21 (2) and (3) of this subsection where the aggregate of any  
22 payments or contributions and costs therefor is not less than  
23 the rate of pay described in Section 13-4-11 NMSA 1978 plus the  
24 amount referred to in this section.

25 C. The provisions of this section shall not affect

. 144198. 1

underscored material = new  
[bracketed material] = delete

1 existing contracts or contracts resulting from bids outstanding  
2 on July 15, 1965. "

3 Section 3. Section 13-4-14 NMSA 1978 (being Laws 1965,  
4 Chapter 35, Section 4, as amended) is amended to read:

5 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF  
6 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

7 A. The director of the labor and industrial  
8 division of the labor department shall certify to the  
9 contracting agency the names of persons or firms he has found  
10 to have disregarded their obligations to employees under the  
11 Public Works Minimum Wage Act and the amount of arrears. The  
12 contracting agency [~~is authorized and directed to~~] shall pay or  
13 cause to be paid to the affected laborers and mechanics, from  
14 any accrued payments withheld under the terms of the contract  
15 or designated for the project, any wages found due such workmen  
16 pursuant to the Public Works Minimum Wage Act. The director  
17 shall, after notice to the affected persons, distribute a list  
18 to all departments of the state giving the names of persons or  
19 firms he has found to have willfully violated the Public Works  
20 Minimum Wage Act. No contract or project shall be awarded to  
21 the persons or firms appearing on this list or to any firm,  
22 corporation, partnership or association in which the persons or  
23 firms have an interest until three years have elapsed from the  
24 date of publication of the list containing the names of the  
25 persons or firms. [~~Any~~] A person to be included on the list to

. 144198. 1

underscored material = new  
[bracketed material] = delete

1 be distributed may appeal the finding of the director as  
2 provided in the Public Works Minimum Wage Act.

3 B. If the accrued payments withheld under the terms  
4 of the contract, as mentioned in Subsection A of this section,  
5 are insufficient to reimburse all the laborers and mechanics  
6 with respect to whom there has been a failure to pay the wages  
7 required pursuant to the Public Works Minimum Wage Act, the  
8 laborers and mechanics shall have the right of action or  
9 intervention or both against the contractor or person acting as  
10 a contractor and his sureties, conferred by law upon such  
11 persons furnishing labor and materials, and, in such  
12 proceeding, it shall be no defense that the laborers and  
13 mechanics accepted or agreed to less than the required rate of  
14 wages or voluntarily made refunds. The director of the labor  
15 and industrial division of the labor department shall refer  
16 such matters to the district attorney in the appropriate  
17 county, and it is the duty and responsibility of the district  
18 attorney to bring civil suit for wages due and liquidated  
19 damages provided for in Subsection C of this section.

20 C. In the event of any violation of the Public  
21 Works Minimum Wage Act or implementing rules, the contractor,  
22 subcontractor, employer or ~~[any]~~ a person acting as a  
23 contractor responsible for the violation, as well as any state  
24 or political subdivision that is a party to the contract in  
25 question and is also responsible for the violation, shall be

. 144198. 1

underscored material = new  
[bracketed material] = delete

1 liable to any affected employee for his unpaid wages. In  
2 addition, the contractor, subcontractor, employer or ~~[any]~~ a  
3 person acting as a contractor shall be liable to any affected  
4 employee for liquidated damages ~~[in the sum of ten dollars~~  
5 ~~(\$10.00) for each calendar day on which a]~~ equal to three times  
6 the actual amount of underpaid wages when the contractor,  
7 subcontractor, employer or ~~[any]~~ a person acting as a  
8 contractor has willfully required or permitted an individual  
9 laborer or mechanic to work in violation of the provisions of  
10 the Public Works Minimum Wage Act.

11 D. In addition to all other remedies, an employee  
12 adversely affected by a violation of the Public Works Minimum  
13 Wage Act by a contractor, subcontractor, employer or a person  
14 acting as a contractor shall have a private right of action for  
15 damages, attorney fees and reasonable costs."

16 Section 4. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2003.